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Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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INDIA: A country afraid to prevent custodial torture

Six years have passed since the lower house of the Indian Parliament passed the Prevention of Torture Act, 2010. The upper house of the Parliament, which reviewed the law after a broad consultation, recommended thorough revision of the law. Since then, the government has shelved the law and nothing has been heard about it since.

Prohibition of torture is not the policy of the Indian State. The Prevention of Torture Act, 2010, is a riveting example of this. The law fails to meet standards, in adequately defining torture and in prescribing appropriate process of investigation of complaints of torture, rendering the law useless, even if it is passed.

Policy makers in the country believe that without the use of torture, India cannot be policed. Public statements repeatedly made by police officers, bureaucrats, ministers, and judges confirm this. India's policing policy is premised around the image of a rough and tough cop, who is expected to show no mercy to the suspect. A large number of Indian public believe that police officers have the right to torture, and that torture is a legitimate method of crime investigation, and use of force is an effective instrument for law enforcement. It is common for police officers to assault people as a part of maintaining law and order.

Judges, particularly those in the lower Judiciary, believe that it is morally wrong to challenge a police officer on the question of torture. This is because the judges are aware that the crime investigation agencies in India often do not have any means to investigate crimes apart from resorting to the use of force. Therefore, even when a detainee complains about physical abuse by the police officer, magistrates ignore the complaint, fail to record the complaint, and fail to provide the basic protection to which that detainee is entitled during custody against torture, i.e. a medical examination.

Crime investigation in India, overwhelmingly, depends on oral evidence. The country does not have even one per cent of the facilities required to undertake modern crime investigation. Due to this, witnesses too are tortured in India.

All efforts to urge India to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment should therefore be linked to efforts to redesign the country's criminal justice mainframe. India should be encouraged to revise its policing policy, and to invest substantially to procure modern crime investigation technologies. India should also be encouraged to reduce its people to police ratio, which, at the moment, is a police officer for every 810 people, a ratio more than two times wider than the global average.

Similar efforts must be made to improve the criminal justice process in India, particularly to address the large divide in the judge to people ratio, which, at the moment, is 13 judges for a million people. This is one of the reasons for decades long delays in criminal trials in India. Modernising the Indian police without addressing scandalous delays in criminal trials will render the modernisation process a futile exercise.

It is equally important for India to redesign its policing laws. Police laws in India are based on colonial legalisations, drafted at a time when the police was primarily understood and expected to function as the administrator's agent that maintains order, most importantly to supress public protests against unfair and arbitrary actions of the British Empire.

Suppression of freedom and dignity and enforcement of obedience were the primary objectives of the Irish Constabulary model of policing that was introduced to the British colonies including India. Policing in India therefore contradicts with respect to human dignity, freedom, and individual rights, founding principles of the Indian Constitution. The spirit of democracy that India claims it strives to uphold is constantly under threat, as long as India does not radically redesign its policing architecture.